

Passed by both Houses



New South Wales

Veterinary Surgeons Amendment Bill 2000

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Veterinary Surgeons Amendment Bill 2000

Act No , 2000

An Act to amend the *Veterinary Surgeons Act 1986* so as to permit the imposition of conditions on the registration of veterinary surgeons; to permit the temporary suspension from practice of a veterinary surgeon during the investigation of a complaint of serious misconduct in a professional respect against the veterinary surgeon; to permit the Board of Veterinary Surgeons to control its funds and employ its staff; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Veterinary Surgeons Amendment Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Veterinary Surgeons Act 1986 No 55

The *Veterinary Surgeons Act 1986* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Fund* from section 3 (1).

[2] Section 3A

Insert after section 3:

3A Notes

Notes in this Act do not form part of the Act.

[3] Section 7

Omit the section. Insert instead:

7 Staff of the Board

- (1) The Board may employ staff. Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of any such staff.
- (2) The Board may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any Act or law.
- (3) The Board may arrange for the use of the services of:
 - (a) any staff or facilities of a government authority, or
 - (b) any contractor.
- (4) For the purposes of this Act, a person who is employed under subsection (1), or whose services are made use of under subsection (3), is an officer of the Board.

[4] Section 17A

Insert after section 17:

17A Conditions on registration

- (1) The registration of a person as a veterinary surgeon under section 12, 13, 15 or 17 is subject to such conditions (including limitations on the right to practise) as may be specified by the Board in the certificate of registration.
- (2) The Board may, by notice in writing given to a registered veterinary surgeon:
 - (a) impose a condition at any time, or
 - (b) vary or revoke a condition imposed under this section.
- (3) However, the Board may impose a condition under subsection (1) or (2) only if the Board is satisfied that the condition is warranted, having regard to any one or more of the following:
 - (a) the provisions of any Act or law affecting veterinary surgeons or the practice of veterinary science,
 - (b) the safety or health of any person,
 - (c) the health or welfare of any animal,
 - (d) damage to the international reputation of Australia in relation to animal exports, animal welfare, animal produce or sporting events.

Note. The Board may be aware, for example, that a registered veterinary surgeon is prescribing or dispensing inappropriate drugs (such as those that leave a residue in meat intended for consumption), or prescribing or dispensing drugs in circumstances that allow the drugs to be used by human contestants in sporting events.
- (4) Without limiting subsection (1) or (2), a condition imposed under either or those subsections may require the holder of the certificate of registration to do either or both of the following within a specified time:
 - (a) to undertake and successfully complete additional academic or practical training courses,
 - (b) to demonstrate, to the satisfaction of the Board:
 - (i) a knowledge of the law and ethics relating to the practice of veterinary science generally, and

- (ii) in particular, a knowledge of the law and ethics concerning the supply, dispensing, storage and use of poisons and therapeutic substances that are relevant to the practice of veterinary science.

[5] Section 18 Registration certificate

Insert after section 18 (2) (b):

or

- (c) the Board, the Investigating Committee or the Tribunal imposes a condition on the registration of the veterinary surgeon with respect to the practice of veterinary science,

[6] Section 18 (4) (b)

Insert “or (c)” after “subsection (2) (b)”.

[7] Section 21 Reviews by the Tribunal

Insert after section 21 (2):

- (3) If the Board imposes a condition under section 17A on the registration of a veterinary surgeon, or varies a condition so imposed, the veterinary surgeon may apply to the Tribunal for a review of the Board’s decision to do so.

[8] Section 22A

Insert after section 22:

22A Serious misconduct in a professional respect

- (1) Without limiting the meaning of the expression *serious misconduct in a professional respect*, a registered veterinary surgeon is taken to be guilty of serious misconduct in a professional respect if the veterinary surgeon:
 - (a) provides information relating to the veterinary surgeon’s qualifications for registration knowing the information to be false or misleading in a material particular, or

- (b) contravenes Order 1998/1 made under section 46 of the *Stock Medicines Act 1989* and published in Gazette No 108 on 17 July 1998 at pages 5496–5498 (or any Order amending or replacing that Order), or
- (c) engages in conduct in the veterinary surgeon's professional capacity that, if repeated or continued, is likely to do any of the following:
 - (i) cause unnecessary suffering to an animal,
 - (ii) cause the inappropriate death of an animal,
 - (iii) adversely affect the safety or health of any person,
 - (iv) damage the international reputation of Australia in relation to animal exports, animal welfare, animal produce or sporting events, or
- (d) breaches any provision, prescribed for the purposes of this paragraph, of the veterinary surgeons' code of professional conduct established under section 23.

Note. Examples of the type of conduct referred to in paragraph (c) (iv) are the prescription or dispensing of inappropriate drugs (such as those that leave a residue in meat intended for consumption) and the prescription or dispensing of drugs in circumstances that allow the drugs to be used by human contestants in sporting events.

- (2) Without limiting subsection (1), a registered veterinary surgeon is taken to be guilty of serious misconduct in a professional respect if it is demonstrated that, in his or her application for registration, the veterinary surgeon provided information relating to his or her qualifications for registration knowing the information to be false or misleading in a material particular.

[9] Section 24 Constitution of Veterinary Surgeons Investigating Committee

Omit “an officer of the Department of Agriculture who is” from section 24 (3) (b).

[10] Part 4, Division 2A

Insert before Division 3 of Part 4:

Division 2A Serious misconduct in a professional respect

25A Investigating Committee may make complaint

If:

- (a) the Investigating Committee is of the opinion that any alleged action, omission or pattern of conduct of a registered veterinary surgeon is such as to give rise to a complaint of serious misconduct in a professional respect against the veterinary surgeon, and
- (b) the Investigating Committee has not received a complaint under section 26 about the alleged action, omission or pattern of conduct,

the Investigating Committee may make the relevant complaint itself, and any such complaint is taken to be a complaint made to the Investigating Committee in accordance with section 26.

25B Investigating Committee may direct suspension of registration or imposition of conditions

- (1) On receiving a complaint that a registered veterinary surgeon is guilty of serious misconduct in a professional respect, and at any stage of its investigation of the complaint, the Investigating Committee may, by notice in writing, direct the Board, pending the final disposal of the complaint:
 - (a) to suspend the registered veterinary surgeon from practice for such period (not exceeding 30 days) as is specified in the direction, or
 - (b) to impose such conditions (including limitations on the right to practise) on the registration of the veterinary surgeon with respect to the practice of veterinary science as the Investigating Committee specifies in the direction (whether or not the conditions are additional to those imposed under another provision of this Act).

- (2) However, the Investigating Committee may give such a direction only if it is satisfied that the suspension or the imposition of conditions is urgently needed, having regard to any one or more of the following:
- (a) the safety or health of any person,
 - (b) the health or welfare of any animal,
 - (c) the international reputation of Australia in relation to animal exports, animal welfare, animal produce or sporting events.

Note. The complaint may be, for example, that a registered veterinary surgeon is prescribing or dispensing inappropriate drugs (such as those that leave a residue in meat intended for consumption), or prescribing or dispensing drugs in circumstances that allow the drugs to be used by human contestants in sporting events.

- (3) The Investigating Committee may also, by notice in writing, direct the Board:
- (a) to vary or revoke any condition, or
 - (b) to revoke any suspension,
- imposed under this section.
- (4) The Board must, by order in writing given to the registered veterinary surgeon concerned, comply with a direction given to it under this section.
- (5) More than one direction may be given under subsection (1) (a) so long as the total period of suspension under this section does not exceed 60 days.

25C Veterinary surgeon to be afforded opportunity to make representations

- (1) Before giving a direction under section 25B (other than a direction to revoke a condition or suspension imposed under that section), the Investigating Committee must advise the registered veterinary surgeon concerned by notice in writing:
- (a) of its intention to give the direction, and
 - (b) of its reasons for giving the direction, and
 - (c) that the veterinary surgeon may make oral or written representations (as the veterinary surgeon chooses) concerning the complaint to the Investigating Committee, and

- (d) that if no response is received from the veterinary surgeon within a period of 5 days after the notice is given, the Investigating Committee will give the direction to the Board, and
 - (e) that the Board has no discretion to refuse to comply with the direction.
- (2) The Investigating Committee must consider any representations made by the veterinary surgeon in relation to the complaint within the time allowed by the notice.

25D Application to Tribunal concerning suspension or conditions

- (1) A registered veterinary surgeon or a former registered veterinary surgeon against whom an order of the Board is in force under this Division may apply to the Tribunal for a review of the decision of the Investigating Committee that gave rise to the order.
- (2) The Investigating Committee may, at any time while an order of the Board under this Division suspending a registered veterinary surgeon from practice is in force, apply to the Tribunal for an order extending the total period of suspension permitted under this Division.
- (3) Such an application may be made even if the Tribunal has reinstated the veterinary surgeon's registration following an application made by the former registered veterinary surgeon under subsection (1), or the Investigating Committee under subsection (2), in respect of a previous suspension.
- (4) The Investigating Committee, a registered veterinary surgeon or a former registered veterinary surgeon may make more than one application under this section.
- (5) The Investigating Committee may appoint one of its members (or, if the Investigating Committee has appointed a secretary, the secretary) to represent the Investigating Committee at the hearing of an application made under this section.

25E Determination of application

- (1) An application made under section 25D is to be determined by the Tribunal constituted by a judicial member of the Tribunal.

- (2) Subsection (1) has effect despite any contrary provision of the *Administrative Decisions Tribunal Act 1997*.
- (3) The Tribunal is to determine the application having regard to all relevant information that the Investigating Committee and the registered veterinary surgeon or former registered veterinary surgeon have furnished to it by the time the application is heard.
- (4) In determining the application, the Tribunal may (regardless of the nature of the application) make any one or more of the following interim orders:
 - (a) an order reinstating the registration of the former registered veterinary surgeon (with or without imposing conditions on that registration),
 - (b) an order confirming the suspension of the former registered veterinary surgeon (with or without extending the period of suspension),
 - (c) an order extending the period of suspension of the former registered veterinary surgeon,
 - (d) an order confirming, varying or revoking the conditions imposed on the registration of the veterinary surgeon with respect to the practice of veterinary science,
 - (e) an order imposing conditions, or additional conditions, (including limitations on the right to practise) on the registration of the veterinary surgeon with respect to the practice of veterinary science.
- (5) A period of suspension may not be extended under this Division (except by operation of section 25G) beyond the time at which the relevant complaint against the former registered veterinary surgeon is finally disposed of.

25F Orders of Tribunal

If a complaint is referred to the Tribunal under section 28 (1) (c), the Tribunal may, at any stage of its inquiry into the complaint, make such of the orders referred to in section 25E (4) as it considers appropriate.

25G Effect of suspension

- (1) While an order under this Division suspending a person from practice remains in force, the person is taken not to be a registered veterinary surgeon.
- (2) On the expiry of the period of suspension specified in the order, or the final disposal of the complaint concerned (whichever occurs first), the person against whom the order was made is reinstated as a registered veterinary surgeon (subject to any order of the Tribunal or the Supreme Court in relation to the complaint that gave rise to the suspension).
- (3) However, if:
 - (a) the Tribunal makes an order under section 32 (1) (b) suspending the person from practice, and
 - (b) an order under this Division suspending the person from practice is in force at the time at which the Tribunal makes that order,

the period of suspension imposed by the order under this Division is extended by operation of this section until the order of the Tribunal takes effect (subject to any order of an Appeal Panel of the Tribunal on appeal under section 34).

25H Effect of conditions imposed

- (1) Conditions imposed under this Division have effect, subject to this Division, until the relevant complaint against the registered veterinary surgeon is finally disposed of.
- (2) This section does not prevent conditions with respect to the practice of veterinary science being imposed under another provision of this Act on the registration of a veterinary surgeon the subject of a complaint.

[11] Section 26 Complaints against veterinary surgeons

Omit “A complaint may be made” from subsection (1).

Insert instead “The Investigating Committee, the Board or any other person may make a complaint”.

[12] Sections 26 and 55

Insert “, or serious misconduct,” after “misconduct” wherever occurring in sections 26 (1) (c) and (5) and 55 (1) (b).

[13] Section 26 (1)

Omit “under section 28 (1)” from paragraph (g).

Insert instead “under section 17A, 25B (4), 25E (4) (e), 28 (1)”.

[14] Section 26 (8)

Insert after section 26 (8) (c):

or

(d) a member of the Board, or

(e) a member of the Investigating Committee,

[15] Section 26 (8A)

Insert after section 26 (8):

(8A) Subsection (8) does not apply in respect of the Board or the Investigating Committee.

[16] Section 27 Investigation by Investigating Committee

Insert after section 27 (4):

(5) Without limiting subsection (4), the Investigating Committee may delegate its function of collecting evidence in relation to an investigation to any person that the Investigating Committee considers appropriate.

[17] Section 29 Miscellaneous provisions relating to investigations of complaints

Omit section 29 (6).

[18] Section 36 Recording of proceedings and decision of Investigating Committee and orders of Tribunal and Board

Insert after section 36 (3) (b):

- , and
(c) an order of the Board under section 25B (4).

[19] Section 52 Suspension or cancellation of licence

Omit “as a consequence of a complaint under Division 3 of Part 4” from section 52 (1) (c).

Insert instead “because of an order in force under Division 2A of Part 4, or as a consequence of a complaint under Division 3 of that Part”.

[20] Sections 54A–54C

Omit the sections.

[21] Section 54D Board to establish and maintain account at financial institution

Omit “for payment into the Fund” from section 54D.

[22] Section 54E Investment of money

Omit “in the Fund” from section 54E.

Insert instead “in the account referred to in section 54D”.

[23] Section 57 Power to summon witnesses and require written information

Insert after section 57 (3):

- (4) A registered veterinary surgeon who is duly summoned is guilty of misconduct in a professional respect if the veterinary surgeon, without reasonable cause:
- (a) fails or neglects to attend after reasonable expenses have been paid or tendered to the veterinary surgeon, or
 - (b) refuses to be sworn or to make a statutory declaration, or
 - (c) refuses to answer any lawful question.

- (5) The chairperson of the Investigating Committee may, by notice in writing, require any person to provide, in accordance with directions in the notice and within the time specified in it, such information, verified by statutory declaration, as is relevant to the investigation of a complaint and is specified in the notice.
- (6) A person must not, without reasonable cause, refuse or fail to comply with a requirement under subsection (5).
Maximum penalty: 20 penalty units.
- (7) A veterinary surgeon who fails, without reasonable cause, to comply with a requirement under subsection (5) is guilty of misconduct in a professional respect.

[24] Section 57A

Insert after section 57:

57A Board may delegate function of collecting evidence

The Board may delegate, to any person that the Board considers appropriate, the function of collecting any evidence that the Board considers necessary for the exercise of its other functions under this Act.

[25] Section 71 Regulations

Insert after section 71 (1) (f):

- (f1) requiring the payment to the Board of such other prescribed fees for services provided by the Board as will assist the Board to operate on a cost-recovery basis,

[26] Schedule 1 Provisions relating to the members and procedure of the Board

Insert after clause 11:

11A Transaction of business outside meetings or by telephone

- (1) Without limiting clause 11, the Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.

- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the person presiding at the meeting of the Board and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

[27] Schedule 2 Provisions relating to the members and procedure of the Investigating Committee

Insert after clause 10:

10A Transaction of business outside meetings or by telephone

- (1) Without limiting clause 10, the Investigating Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Investigating Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Investigating Committee.
- (2) The Investigating Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or

- (b) a meeting held in accordance with subclause (2),
the person presiding at the meeting of the Investigating Committee and each member have the same voting rights as they have at an ordinary meeting of the Investigating Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Investigating Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

[28] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

the Veterinary Surgeons Amendment Act 2000

[29] Schedule 4, Part 4

Insert after clause 35:

**Part 4 Provisions consequent on enactment of
Veterinary Surgeons Amendment Act 2000**

36 Investigating Committee

- (1) The person holding office as the member of the Investigating Committee referred to in section 24 (3) (b), as in force immediately before the amendment of that provision by the 2000 Act, ceases to hold office as such on the commencement of Schedule 1 [9] to that Act.
- (2) The person is not entitled to any remuneration or compensation for ceasing to hold that office.
- (3) The person appointed as a member of the Investigating Committee under section 24 (3) (b) as amended by the 2000 Act is taken to be appointed for the balance (if any) of the term for which the person referred to in subclause (1) was appointed.

(4) In this clause:

the 2000 Act means the *Veterinary Surgeons Amendment Act 2000*.